



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2024 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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Navigating Constraints in New Age Media Landscapes

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Received 10 May 2024; Accepted 12 June 2024; Published 17 June 2024

The media game of India has changed with the emergence of contemporary media which offers fresh ways for participation, expression and communication. The development of these technologies has made information accessible to everyone and created a global public sphere where people can debate publicly, air their views aloud or connect with others around the world. India is a democratic country that recognises freedom of speech as one of its fundamental rights. Article 19(1)(a) is subjected to reasonable restrictions under Article 19(2) of the Indian Constitution. However, the interaction of new-age media with free speech raises important legal issues that require maintaining a balance between the two. The Indian legal framework governing new age media is still being developed especially after recent legislations such as Information Technology (Guidelines for Intermediaries And Digital Media Ethics Code) Rules 2021 came up to deal with issues like content moderation; digital privacy and online safety. However, these rules need more enforcement, consistency, and accountability. While various nations have legal codes governing internet content, the new media can effectively decide what should not circulate on their platforms through their 'community guidelines' which are written policies that cover a range of harmful activities like hate speech, violence or incitement to violence, and disinformation among others thereby limiting what is made available online. Indian courts have also played a crucial role in defining the boundaries of social networking sites under law through their interpretations and rulings. Further, some ways forward are also suggested such as adopting a multi-stakeholder approach towards resolving India's new age media regulation. Governments need industry players to work together with civil society organisations so that a regulatory framework can be created that upholds fundamental rights while harnessing the full benefits of modern media technology.

Keywords: *media, digital, community guidelines, internet, media law.*

INTRODUCTION

India has one of the largest media ecosystems in the world. It is estimated that the nation publishes over 17,000 newspapers, 100,000 magazines, 180 television news channels, and countless websites available in multiple languages. Numerous Facebook pages claiming to be news publishers, and local news on everything from police raids to real estate trends can be found on YouTube. For this reason, any advancement in the media has an impact on people all over the world.¹ It is undeniable that the digital era has revolutionised how companies and artists engage with their target audience. Even though TV commercials and print newspapers can still help make this connection, new technologies offer new possibilities. Conversely, platforms that rely on digital technology for audience communication are referred to as New Media. New media is also frequently called digital media or multimedia in today's jargon. Social media, virtual worlds, and other web-based products like YouTube videos, podcasts, websites, and online advertisements are examples of new media technologies.²

It is possible to customise new media to meet the unique needs and interests of every customer. Advances in customisation through algorithms keep users happy and interested as new media grows and changes. The government of India's 'Digital India' initiative has given the nation's internet service providers a newfound ability to reach a wider audience and offer their services at competitive rates. India, a nation with the largest proportion of young people, has been using the Internet aggressively to offer a variety of public and private services. In India, smartphones are the primary devices used to access the internet. Social media has gained enormous popularity among people as internet usage has spread throughout both rural and urban areas of the nation. India is a global leader in internet usage and app downloads; in terms of internet usage, and only surpassed by China.

¹ Rakesh Joshi, 'Media in the new age of regulation' *Business India* (05 April 2021)
<<https://www.businessindia.co/magazine/media-in-the-new-age-of-regulation>> accessed 02 May 2024

² Michael Feder, 'What is new media?' (*University of Phoenix*, 16 February 2022)
<<https://www.phoenix.edu/blog/what-is-new-media.html>> accessed 02 May 2024

Due to the widespread use of social media by the nation's youth, particularly millennials and Gen Z, our nation is among the most active social media companies. The popularity of social media in the nation has led to a steady increase in digital ad spending over the years.³

IMPACT OF NEW AGE MEDIA ON THE SOCIETY

Technologies of communication advanced steadily and influenced cultures extensively. People tend to claim that the influences and impacts are reciprocated by impacts. According to people's perceptions, social media has been one of the most powerful tools that could influence and shape people's human behaviour and culture in general. Social media may have surpassed the culturally added borderless boundaries concept. People consider an example of Facebook as the social media that enables people across the world with distinct cultures to meet on the platform. The invasion of culture may occur, considering that the media content uploaded consisted of each participant's culture. Other social media depended on the influencer to shout about diverse values and practices. Some people believe that local cultures may have faltered over the years of losing their identity and assuming a co-cultural stand.⁴

Balance between Freedom of Speech and content on New Age Media platforms

Social media platforms have become essential to contemporary communication because they allow individuals to voice their thoughts and participate in public debates. However, there are significant legal issues raised by the interaction of new-age media and free speech.

The right to free speech and expression is guaranteed by the Constitution in a liberal legal system, but this right is rarely considered absolute. While intended to protect national interests, the limitations outlined in Article 19 of the Indian Constitution have come under fire in India due to their broad application and potential for misuse in quelling dissent. For a wide range of grounds, including but not limited to 'security of the state,' 'public order,' 'decency or morality,'

³ Y. Muralidhar Reddy et. al., 'Social Media: Internet Trends In India And Growth Of Social Media In The Recent Times' (2021) 8(1) International Journal of Business Administration and Management Research <<http://dx.doi.org/10.6084/m9.figshare.14597682>> accessed 03 May 2024

⁴ Mui Joo Tang, 'Social Media: Influences and Impacts on Culture' (2020) 1 Intelligent Computing <https://doi.org/10.1007/978-3-030-52249-0_33> accessed 02 May 2024

‘incitement to an offence’ and ‘friendly relations with foreign states,’⁵ the Indian government can silence its citizens. These limitations appear to weaken the fundamentally protective nature of the Constitution in the Indian context.⁶

But given India's political, cultural, and religious diversity and sensitivities, as well as the constant risk of offending some deeply held beliefs or viewpoints, the ban on speech based on these grounds has had unfavourable effects on the country. This is because they are unable to distinguish between those who pose a threat to public order, decency, or morality, and those who are a threat to their political or personal sensitivities. For voicing divergent opinions, there have been multiple occasions where people, organisations, and media outlets have been the target of violence, intimidation, and harassment.⁷

Internet shutdowns have been used by state governments in India, regardless of their political inclinations, as a convenient means of quelling dissent and creating the impression that firm action is being taken to uphold law and order.⁸ The Supreme Court of India has emphasised the significance of constitutional compliance by directing Internet shutdowns to follow necessity and proportionality standards.⁹ On the other hand, persistent disregard for these rules suggests a serious lack of accountability.

To ensure that different viewpoints can be sincerely held and expressed and to preserve and reflect the pluralistic nature of Indian democracy, ‘freedom to criticise’ should be better protected. People should be free to voice their opinions in the largest democracy in the world, but they are progressively losing that freedom due to fear of retaliation from the public and legal

⁵ Constitution of India 1950, art 19(2)

⁶ Subhajit Basu and Shameek Sen, ‘Silenced voices: unravelling India’s dissent crisis through historical and contemporary analysis of free speech and suppression’ (2023) 33(1) Information & Communications Technology Law <<https://doi.org/10.1080/13600834.2023.224978>> accessed 03 May 2024

⁷ ‘India: Government Policies, Actions Target Minorities’ (Human Rights Watch, 19 February 2021) <<https://www.hrw.org/news/2021/02/19/india-government-policies-actions-target-minorities>> accessed 04 May 2024

⁸ Rajat Kathuria, *The Anatomy of an INTERNET BLACKOUT: Measuring the Economic Impact of Internet Shutdowns in India* (Indians Council for Research on International Economic Relations 2018)

⁹ *Anuradha Bhasin v Union of India* (2020) 1 SCALE 691

repercussions from the government. There have been attempts in several social media-related cases to control or censor content on the dubious pretext that it is 'offensive' or 'objectionable'.¹⁰

India has long taken pride in its rich cultural diversity since it symbolises a country where people from all backgrounds live in harmony with one another. In a nation as diverse as India, celebrating pluralism is crucial to preserving its social fabric. The issue in India is not that the Constitution does not protect free speech; rather, it is that the legal system, certain laws, and a lack of consistent case law make it simple to stifle free speech.¹¹

A commitment from the government, civil society, media, and citizens to work towards strengthening the democratic process and safeguarding the fundamental rights and liberties of all people is necessary to protect and promote dissenting voices, uphold the rule of law, and ensure the independence of democratic institutions. The definition and application of free speech and expression in India will be put to the test as the nation deals with new issues and advances technologically. The government must acknowledge the significance of upholding the right to freedom of speech and expression, even in cases where the opinions expressed are divisive or critical of the state. The democratic process runs the risk of becoming distorted in the absence of these safeguards, and the democracy's overall health is compromised.

Please remember the following text: 'Privacy Concerns' - Social media privacy involves personal and sensitive information gathered from user accounts. The information is sometimes also published through the posts and information in profiles. Other ways of unintentionally releasing information could be through tracking cookies, which track any online activity of a user, including his browsing of a webpage, sharing of social media, or purchase history. All the information is then pieced together into groups of users, and the data brokers then sell this for purposes of advertising.

¹⁰ Ministry of Electronics and Information Technology, Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

¹¹ Anindito Mukherjee, 'Stifling Dissent: The Criminalization of Peaceful Expression in India' (*Human Rights Watch*, 24 May 2016) <www.hrw.org/report/2016/05/25/stifling-dissent/criminalization-peaceful-expression-india> accessed 05 May 2024

Creating a social media account and using it leaves digital traces all over the internet. Some of the ways through which companies gather personal information on interests and locations from the platform include tracking cookies, geofencing, and cross-site tracking. The users sign up for an account and agree to the terms and conditions, which give social media companies the right to take information. Even with an account being private, sensitive information is still accessible to advertisers and scammers.

Social media platforms, being globally networked services, need to cross diverse privacy expectations and local laws across borders. It strongly urges that the biases of society reflected and amplified by algorithms in automated decision-making and the ethics of transparency and rights regarding the profiling of users are highly recommended. A critical ethical position is the right of users access to their data held by social networks. Social media companies should prove far greater commitment to moral obligations in protecting users' privacy and welfare. While it is voluntary, ethics have a greater impact on long-term trust compared to laws. Meanwhile, users should be informed that it is the way to maximize data collection and engagement metrics platforms survive on. Therefore, users must realize that it is time they keep their eyes open and become shrewd custodians of personal data. This will, therefore go a long way in making informed consent and measures that enforce ethically better strengthen social media privacy.

LEGAL FRAMEWORK GOVERNING NEW AGE MEDIA

The United Nations, the US Constitution, and the British Constitution are just a few of the international organisations that have truly inspired India's legal framework for press freedom. *“Everyone has the right to freedom of opinion and expression as well as the right to seek and impart information through any medium regardless of the frontier”*.¹²

Print, cinematograph films, broadcasting, and digital media are the four main categories into which the Media Entertainment (M&E) industry in India can be divided. The Ministry of Information and Broadcasting (MIB) oversees each of these categories, with help and support from autonomous organisations, statutory bodies, public sector undertakings, and subordinate organisations in carrying out their regulatory duties. The Ministry of Electronics and

¹² Universal Declaration of Human Rights 1948, art 19

Information Technology (MEITY) partially regulates digital media since it uses platforms related to information technology.

The Information Technology Act (IT Act) of India governs a variety of online activities, including those involving social media. Sections 67A, 67B and 67C regulate content and specify that anyone who transmits or publishes any type of obscene material, including sexually explicit material depicting children in sexual acts, will face the penalty and imprisonment specified by the Act.¹³ The Central government has the authority to issue such directions for the blocking of public access to any information via any computer resources.¹⁴

There are a few other Acts and regulations in place to punish such objectionable content on OTT platforms, including the Indian Penal Code 1860, the Indecent Representation of Women (Prohibition) Act 1986, and the POCSO (Protection of Children from Sexual Offences) Act 2012.

However, as subscriptions rise and more people rely on OTT to watch films and web series, direct releases on OTT platforms are becoming more common, particularly during pandemics. As a result, a new rule governing OTT content, but with a different approach, has been implemented which is the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021.¹⁵

Social media intermediaries follow due diligence obligations under the IT Rules, which include content moderation obligations.¹⁶ This 2021 rule applies to social media companies such as Facebook, Twitter, and Google, as well as messaging apps like WhatsApp, OTT platforms such as Netflix, Amazon Prime, Disney Hotstar, and digital news media. The Ministry of Electronics and Information Technology administers social media rules, whereas the Ministry of Information and Broadcasting administers OTT and digital media rules.

¹³ Information Technology Act 2000, s 67

¹⁴ Information Technology Act 2000, s 69A

¹⁵ V B Archana Priya, 'Overview of Over-the-Top (OTT) Platforms in India- Analysis of IT Rules 2021, Judicial Battles, the Balancing Act of Artistic Freedom of Speech and Expression, and Challenges for Regulation in India' (*Legal Research and Analysis*, 4 November 2023) <<https://legalresearchandanalysis.com/overview-of-over-the-top-ott-platforms-in-india-analysis-of-it-rules-2021-judicial-battles-the-balancing-act-of-artistic-freedom-of-speech-and-expression-and-challenges-for-regulation-in-india/>> accessed 05 May 2024

¹⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

The rules defined 'publishers of news and current affairs content' ('digital news portals') as part of 'digital media' and attempted to regulate these news portals under Part III of the Rules (the 'Impugned Part') by imposing government oversight and a 'Code of Ethics'.

Further, as per the 2021 IT Rules, OTT platforms are required to self-classify the content into five age-based categories U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult). They are also required to implement access control mechanisms like parental locks for content classified as U/A 13+ or higher, and implement age verification mechanisms for content classified as 'A'.¹⁷

The Digital Personal Data Protection Act of 2023 (the 'DPDP Act') was published in the official gazette on August 11, 2023, following approval by both houses of the Indian parliament and the President of India. The DPDP Act aims to overhaul the current legal framework governing personal data, which is based on Section 43A of the Information Technology Act of 2000 and the rules enacted under that provision (IT Rules). Rapid advancements in digital technology, the lack of a specific data privacy law, and the Supreme Court of India's decision to classify privacy as a fundamental right under the Indian constitution were all factors that influenced the adoption of the new legislation.¹⁸

In 2022, the Indian government also proposed enacting the Digital India Act (DIA), which would provide a global and consistent legal framework for India's evolving digital ecosystem. The MEITY held consultations with various stakeholders to discuss DIA's essential features and legal framework. According to the consultations, the skeleton of the DIA will retain the legal framework and principles, while the core constituents will be online safety, trust and accountability, an open internet, and regulations of new age technologies such as artificial intelligence and blockchain. This new framework will also include the Digital Personal Data Protection Act, Digital India Act Rules, National Data Governance Policy, and IPC amendments for cybercrimes.

¹⁷ *Ibid*

¹⁸ Sandip Bhagat and Deborshi Barat, 'India's New Law: The Digital Personal Data Protection Act, 2023' (*Chambers and Partners*, 1 September 2023) <<https://chambers.com/articles/s-r-data-india-s-new-law-the-digital-personal-data-protection-act-2023>> accessed 6 May 2024

PLATFORM POLICIES AND COMMUNITY GUIDELINES

As de facto online speech regulators, social media and messaging platforms play a crucial role in making decisions regarding the fight against online influence operations. Although many countries have laws governing what can be found on the internet, platforms are largely free to decide what can and cannot be posted. Major platforms have started upholding public ‘**Community Standards**’ in recent years, which are written guidelines on a variety of harmful activities like violence, hate speech, and influence operations.

Community standards go beyond just what users say in their communications. User behaviour is given even more attention, such as abusive or spammy activity. Policies also specify which real-world actors are permitted to use platforms, how content may be shared, and what consequences in fact force platforms to act. The community standards on certain platforms are much longer, more intricate, and/or more specific than those on others.¹⁹

The new concern that social media companies have for the right human rights standard for their content moderation operations is a relatively novel phenomenon, much like the notion that these platforms closely monitor what users publish. Social media platforms for long have happily assumed the role of 'content intermediaries', promoting free speech but providing little in the way of rule books to its users.

Twitter did make some exceptions about the allowance given to freedom of expression, especially where spam, pornography, privacy, or copyrights were concerned. The first platform policies by Twitter were a significant step in creating rules on speech permitted on that platform. Platform content policies only had limited scope until the early 2010s. With the massive growth in the user base, and raising the profile of social media platforms in political affairs, shaping electoral politics but increasingly affected by increasing demand and regulation.

Other sites have created detailed and complex policies on what can and cannot be posted on their sites. Those platform policies, which are usually featured on public pages accessible to

¹⁹ Jon Bateman et. al., ‘Platforms’ Community Standards Address Influence Operations’ (*Carnegie Endowment for International Peace*, 1 April 2021) <<https://carnegieendowment.org/2021/04/01/how-social-media-platforms-community-standards-address-influence-operations-pub-84201>> accessed 06 May 2024

users, are often notated. In some cases, these are supplemented with transparency centres that take the form of websites describing how the companies implement their rules. This is appropriate because large social media firms' written policies and enforcement practices comprise a comprehensive and potent way of regulating Internet communication.

In addition, UNESCO has worked on '**Guidelines for Regulating Digital Platforms**', which could be a further step in the right direction. Similarly, broader efforts to establish 'platform councils,' which bring together various stakeholders to provide advice to platform policy teams, may also be helpful.²⁰

ACCEPTANCE AND PERCEPTION OF THE RESTRICTIONS BY USERS

Regulatory limitations are a hot topic in the world of new-age media, with attention being drawn to a wide range of stakeholders. Cultural, societal, and ideological factors influence users' highly diverse, complex attitudes towards censorship in the digital domain. Some believe content moderation is needed to preserve the integrity and safety of the internet, while others see it as a threat to free speech. The user experiences and perceptions of new-age media platforms are highly dependent on privacy considerations. The level of trust that users have in data protection and the mechanisms of governance in a platform varies based on changing regulatory frameworks and historic cases of privacy breaches.

The opinions of users about restrictions on new-age media vary greatly and depend on many different things. However, some people consider these restrictions good because they protect users from harmful content whereas others think that they are undemocratic forms of censorship and violations against freedom of speech. People's views may also be shaped by fears over data security and privacy whereby certain individuals view controls as necessary protections against unauthorized access to personal information. Many users regard transparency and answerability highly, demanding full disclosure on how platforms operationalize their policies

²⁰ Edoardo Celeste et. al., 'Platform Policies Versus Human Rights Standards' (2023) Content Governance Dilemma. Information Technology and Global Governance <https://doi.org/10.1007/978-3-031-32924-1_5> accessed 07 May 2024

for moderating content; however, too strict laws can limit peoples' exposure to various opinions or facts online.

Trust in platform governance significantly affects user attitudes towards legislation promoting safety and etiquette when using the internet. This implies that those who have faith in the ability of these companies to moderate responsibly will support such rules while those without trust may oppose them altogether or propose alternative measures like self-regulation. Ultimately, the public recognizes that it is important to strike a balance between the rights of individuals vis-à-vis duties owed by groups; this means enacting more nuanced legislations that cater for conflicting interests but still uphold freedom and responsibility at its core values.

LANDMARK JUDGEMENTS

With their interpretations and rulings, Indian courts have been instrumental in establishing the bounds of law on social media. The Indian judiciary's changing stance on new-age media-related issues, such as free speech, privacy, online content regulation, and emerging digital technologies, is reflected in these rulings. They offer direction and establish standards for how laws should be interpreted and applied in the digital age.

In the case of **Shreya Singhal v Union of India**²¹, the court noted that Article 19(2) of the Indian Constitution does not apply to the terms used in 66A because they are entirely ambiguous and open-ended. The court invalidated Section 66A because it lacked any direct correlation or link with disrupting public order or encouraging the commission of an offence. The court's strategy was to uphold the fundamental right to freedom of speech and expression, which is protected by Article 19 (2) of the Constitution and cannot be restricted by legislation.

Indian National Congress v Union of India²²: In this case, the Supreme Court upheld Section 66A's validity while clarifying its interpretation. The court ruled that online speech could only be restricted if it was a genuine threat to public order or had a likelihood to promote violence. It emphasised the importance of balancing free speech and public order.

²¹ *Shreya Singhal v UOI* (2015) 5 SCC 1

²² *Pooja Ravinder Devidasani v State Of Maharashtra & Ors* (2014) 16 SCC 1

The case of **Kamlesh Vaswani v Union of India**²³ addressed the issue of blocking websites that host objectionable content, specifically child pornography. To protect children from exploitation, the Hon'ble Supreme Court ruled that intermediaries, such as social media platforms, must proactively detect and block accessibility to such content.

The Kerala High Court in **Faheema Shirin R.K. v State of Kerala**²⁴ held that an individual's freedom of expression and choice cannot be restricted solely because of objections voiced by others on social media. It underlined how crucial it is to let people voice their thoughts without worrying about reprisals or censorship.

The case of **Maheshwari v Union of India**²⁵ involved a plea for the quashing of an FIR filed against a web user for allegedly posting objectionable content. The Supreme Court emphasised that social media users cannot be held liable for simply forwarding or sharing content until there is an obvious attempt to encourage hate speech or incite violence.

WAY FORWARD

The future of new-age media restrictions must seek an appropriate balance between public concerns regarding misinformation, hate speech, privacy violations, and other harmful content and the fundamental principles of free speech, innovation, and digital rights. Here are some of the important considerations and strategies with which to proceed.

Multi-stakeholder Dialogue: Involve the stakeholders—be they governments, industry, civil society groups, or academics—in productive discussions to help develop evidence-based strategies in the regulation of new-age media. The collaboration can help ensure that the rules are effective and open and protect fundamental rights.

Legislative Reforms: Revise and upgrade existing legislation and laws to address the challenges of new-age media. The law should neither be very narrow nor very broad, proportionate,

²³ *Kamlesh Vaswani v Union of India* (2015) 2 SCC 701

²⁴ *Faheema Shirin R.K. v State of Kerala* (2019) SCC Online Ker 529

²⁵ *Maheshwari v Union of India* (2020) SCC Online SC 1223

unbiased, and technologically neutral, enabling authorities to address emerging issues without suppressing innovation or limiting legitimate expression.

Self-Regulation: Encourage new-age media platforms to implement and enforce stricter moderation of content policies, community guidelines, and industry best practices to dispose of misinformation, hate speech, and harmful content. The platform must make proper investments in technology, personnel, and transparency measures to make its content-fighting abilities stronger.

Empower the Users: Promote digital and media literacy efforts that will encourage the users to judge online information critically, detect misinformation, and safeguard their personal information and digital rights. Inform the users about online privacy, responsible digital citizenship, and the dangers of sharing personal information that can better reduce the adverse effects of harmful content online.

Transparency and Accountability: This should include improved transparency mechanisms for new-age media platforms taking ownership of all content postings, whether made and those taken down, moderation decisions, and algorithmic processes and data practices. Auditing, and transparency metrics such as regular reports, audits, and user appeals will help develop trust and accountability within the digital ecosystem.

CONCLUSION

In a nutshell, the new age of media in India has changed the way people access, share, and consume information. The proliferation of digital technologies has truly transformed the media environment to present new means of interaction with audiences. However, while these benefits offer great advantages, issues about misinformation, issues of privacy, and proper content regulation arise.

New-age media introduces changes in society, communication, and political discussion. Social media is an inevitable part of modern communication, for self-expression, public discourse, and connection between people from different nations. However, new-age media has brought several issues to the fore regarding balancing free speech and regulating online content.

The legal framework governing new-age media in India is constantly evolving and improving with the putting up of various laws including the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021. However, it needs clarifications in implementation and enforcement, consistency, and accountability.

While such rules as the 2023 Digital Personal Data Protection Act aim to be at the forefront in addressing such issues, continued vigilance, along with oversight, will be created to generate compliance and accountability. Along with the laws, social media platforms and new-age media have adopted 'Community Guidelines' to make decisions regarding what can be posted on their platform and what should be restricted.

There are various ways - forwards suggested, to seek an appropriate balance between public concerns and fundamental principles of free speech and innovation. These involve including a Multi-stakeholder approach, bringing legislative reforms, self-regulation, empowering the users etc. It can be thus concluded and stated that a balance must be created between the social challenges and the very principles of freedom, innovation, and digital rights, which is the key to the future of new-age media restrictions in India. Partnership, evidence-based approaches, and a coordinating regulatory ecosystem can be designed through which we shall be in a position to protect a safe, accessible, and vibrant digital platform for all.